IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 39 OF 2003

Shri Anant K. Khobrekar,
aged about 40 years,
businessman, resident of
Mapusa, presently in
Sub-Jail, Vasco. ... Applicant.

versus

1. Dr. Baburao Y.
   Prabhudessai,
   Flat No.3,
   Shar-n-Shorai
   Apartments, Vadre
   Valulikar Road,
   Margao, Salcete,
   Goa.

2. State of Gooa
   (through P.P.) ... Respondent.

Mr. M. S. Joshi, Advocate for the Applicant.

Mr. A. P. Lawande, Advocate for Respondent No.1.

Mr. S. N. Sardessai, Public Prosecutor for Respondent No.2/State.

CORAM: P. V. HARDAS, J.

DATED: 25TH NOVEMBER, 2003.

ORAL JUDGMENT

This Criminal Revision Application has been

filed by the Applicant/Original Accused assailing the Judgment of the learned IIIrd Assistant Sessions Judge, South Goa, Margao, dated 11th August, 2003, in Criminal Appeal No.24 of 2003, dismissing the Appeal and confirming the conviction and sentence passed against the Applicant herein by the learned Judicial Magistrate First Class 'C' Court, Margao, in Criminal Case No.495 /N/2000, convicting the Applicant/Accused for an offence punishable under Section 138 of Negotiable Instruments Act,1881 and sentencing him to undergo Simple Imprisonment for a period of 20 days and payment of compensation of Rs.60,000/-, with a default stipulation to undergo Simple Imprisonment for a period of one month in the event of failure to pay the aforesaid amount.

2. The facts in brief as are necessary for the decision of this Appeal are set out hereunder:-

The Non Applicant No.1/Original Complainant filed a complaint under Section 138 of Negotiable Instruments Act, 1881 as the cheque issued by the Accused was for an amount of Rs.48,770/-. Such cheques issued for Rs.48,770/-, on presentation by the Complainant, were returned back unpaid on account of insufficiency of funds. This fact was intimated by the Complainant to the Accused and the Accused had

requested the Complainant to present the cheques again in the first week of August. The Complainant once again presented the cheques for encashment and the cheques were returned unpaid on account of the reason "Not Arranged For". After issuance of the notice and on the failure of the Accused to pay the aforesaid amount, the Complainant instituted the prosecution. The learned Trial Court explained the substance of accusation to the Applicant/Accused who pleaded not guilty and claimed to be tried. The Complainant examined himself as P.W.1 and an Officer of the Bank as P.W.2. The Accused examined himself as D.W.1 and examined two more witnesses as D.W.2 and D.W.3.

3. The learned Trial Court found that the Accused had issued the cheques towards discharge of his liability and that the cheques had been dishonoured on account of insufficiency of funds. The learned Trial Court also found that the notice of demand had been issued within 15 days on intimation of the dishonour of the cheque. Since, the Accused had failed to pay the amount, the learned Trial Court found that the offence was against the Accused and convicted and sentenced him accordingly.

4. The Applicant/Accused being aggrieved by his conviction and sentence carried the Appeal to the

learned District and Sessions Court, South Goa, Margao. The learned IIIrd Assistant Sessions Judge, South Goa, Margao, by his Judgment dated 11th August, 2003, in Criminal Appeal No.24 of 2003, dismissed the Appeal filed by the Applicant/Accused and confirmed the conviction and sentence.

5. Mr. M. S. Joshi, learned Counsel appearing on behalf of the Applicant/Accused has urged that the findings of the two Courts below are unwarranted and the defence which the Applicant has taken should clearly prevail over the prosecution evidence.

6. Mr. A. P. Lawande, learned Counsel appearing on behalf of Respondent No.1 has submitted that in the absence of any charge of perversity re-appreciation of evidence in the Criminal Revision Application is not called for.

7. The two Courts below on appreciation of evidence have recorded their finding. It is true that concurrence is not a shield against the charge of perversity. However, in the present case, the learned Counsel appearing on behalf of the Applicant/Accused has not been able to demonstrate that the concurrent finding of fact recorded by the two Courts below are perverse warranting any interference against acquittal.

On merits, therefore, according to me, the revision is devoid of any substance and the concurrent finding of fact recorded by the two Courts below does not need any interference by this Court.

8. Mr. M. S. Joshi, learned Counsel appearing on behalf of the Applicant has stated that the Applicant/Accused has deposited an amount of Rs.30,000/- on 19th August, 2003 from out of the amount of compensation awarded by the learned Trial Court. Mr. Joshi, learned Counsel appearing on behalf of the Applicant/Accused further states that the Applicant/Accused has undergone the sentence of 10 days Simple Imprisonment from out of the sentence of 20 days Simple Imprisonment as awarded by the learned Trial Court.

9. In these circumstances, it is, therefore, submitted that the sentence of 20 days Simple Imprisonment is extremely harsh and the Applicant/Accused is willing to file an undertaking in this Court that he would deposit the balance amount of the compensation i.e. Rs.30,000/- within three weeks from today.

10. In the peculiar facts of this case, therefore, according to me, since the Applicant/Accused

has already undergone the sentence of 10 days Simple Imprisonment from the sentence of 20 days Simple Imprisonment which is awarded by the learned Trial Court, the sentence is required to be modified by sentencing the Applicant/Accused to the period of imprisonment already undergone without interference in the quantum of compensation awarded by the learned Trial Court.

11. The Criminal Revision Application, therefore, partly succeeds. The sentence of 20 days Simple Imprisonment is altered to a period of 10 days Simple Imprisonment already undergone by the Applicant/Accused. The undertaking furnished by the Applicant/Accused in writing is taken on record and marked "X" for the purpose of identification. The undertaking is accepted. As per the undertaking, the Applicant/Accused shall deposit the balance amount of compensation in the Trial Court within three weeks from today. On failure of the Applicant/Accused to deposit the balance amount of compensation the default sentence shall be executed.

12. On the Applicant/Accused depositing the amount of compensation, it is needless to add that the Respondent No.1 is at liberty to withdraw the aforesaid amount.

13. Criminal Revision Application accordingly partly allowed.

P. V. HARDAS, J.

RD.